Supreme Court, U.S.
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In the Supreme Court of the United States

PATRICK L. COOK,

Petitioner,

v.

HELEN A. COOK, ROBERTO SILVA, HON. JUDGE ROSALIE VIGNA, COLORADO COURT OF APPEALS, COLORADO SUPREME COURT,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE NINTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

PATRICK COOK.
Petitioner Pro Se
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QUESTION PRESENTED

Is the *Rooker–Feldman* Doctrine a provision that allows the Respondents in Colorado to violate the petitioner's Civil Rights?

TABLE OF CONTENTS

QUESTION PRESENTED i
TABLE OF AUTHORITIES iii
JURISDICTIONAL STATEMENT 1
STATEMENT 2
REASONS FOR GRANTING THE PETITION 2
CONCLUSION 3
APPENDIX A-1

TABLE OF AUTHORITIES

Please note that the below cited cases that the Respondents are using as a claim to their Defense does not apply in this situation due to the fact that these cited cases are not about a question of law that the Respondents failed to acknowledge and or declare, these are cases of a misapplication already well defined law or Statute, there are no known cases of this nature to assist me in my Defense.

CASES

Alamba v. Pugh, U.S. 781 [1978]
Atascadero State Hospital v. Scalon, 473 U.S. 234 [1985]
Bradly v. Fisher, 80 U.S. [13 Wall] 335 [1871]
Brisco v. LaHue, 460 U.S. 325 [1983]
District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 [1983]
Edelman v. Jordan, 415 U.S. 651 [1974]
Eldridge v. Block, 832 F. 2d 1132 [9th Cir. 1987]
Exxon Mobile Corp. v. Saudi Basic Industries Corp., 544 U.S. 280, 125 S.Ct. 1517 [2005]
Haines v. Kerner, 404 U.S. 519 [1972]
Johnson v. DeGrady, 512 U.S. 997 [1994]
Lance v. Dennis, U.S. 126 S. Ct. 1198 [2006]
Loux v. Rhay, 375 F.2d 55 [9th Cir. 1967]
Mireless v. Waco, 502 U.S. 9 [1991]
Noel v. Hall, 341 F. 3d 1148 [9th Cir. 2003]
Papasan v. Allain, 478 U.S. 265 [1986]
Pierson v. Ray, 386 U.S. 547 [1967]
Quern v. Jordan, 440 U.S. 332 [1979]
Stump v. Sparkman, 435 U.S. 349 [1978]
Wolfe v. Strankman, 392 F.3d 358 [9th Cir. 2004]

STATUTES

28 U.S.C. 1331 1
28 U.S.C. 1332 1
42 U.S.C. 1983 1

JURISDICTIONAL STATEMENT

JURISDICTION IS BASED ON 28 U.S.C. 1343[a]3] and 42 U.S.C. 1983, 28 U.S.C. 1331 AND 1332.

STATEMENT

In a divorce proceeding that took place in Colorado, my ex wife and her attorney was seeking spousal maint's, in the process of seeking spousal maint's there are requirements one must meet under Colorado Revised Statute 14-1 0-1 14-[3] & [4], and 14-1 0-1 1 5-[7][C], The lower Courts in Colorado only awarded her spousal maint's under C.R.S. 14-1 0-1 14-[3]&[4], I explained to the Respondents in Colorado that my ex wife was not entitled to spousal maint's under the requirements that is outlined in C.R.S.14-10-115-[7][C], The Respondents in Colorado flat refused to acknowledge let alone make a ruling on the Statute in question, after I had exhausted all of my appeals and writ of Certiorari at the State level in Colorado I filed a civil rights suit in the Federal Courts of Nevada stating that the Respondents in Colorado violated my Civil Rights for flat refusing to acknowledge and declare the meaning of their own laws and Statute when brought to their attention. The Federal Courts in Nevada ruled against my suit under the *Rooker-Feldman* Doctrine stating that my suit arose out of a previous State Court ruling already decided in Colorado, and that the *Rooker-Feldman* Doctrine bars a State Court loser from bringing action for a legal wrong committed by the Respondents in Colorado.

REASONS FOR GRANTING THE PETITIONS

All of the Respondents in Colorado had an obligation to me to acknowledge that C.R.S.14-10-115-[7][C] exist, and for the Respondents in Colorado to flat refuse to acknowledge that the Statute exist goes against not only basic court proceedings, but is also a violation of my civil rights, their actions can only be viewed as to tell me that I have no basic rights to ask the Respondents in Colorado to acknowledge and declare the meaning of their own

laws and Statutes when the Law and or Statute is in question and brought up on numerous appeals at the State level, I am requesting that this Honorable Highest Court of the Nation to agree that I as a born U.S. citizen am entitled to have a question of law acknowledge and the meaning declared at the State level and anything short of that is a violation of my civil rights.

CONCLUSION

I really hope that this Court agrees with me on the fact that The *Rooker-Feldman* Doctrine can only apply if the Respondents Acknowledge and or declared the meaning of their own State Laws and Statutes in question, the Respondents in Colorado violated very basic court proceedings and should have had the common courtesy to at least acknowledge their own Laws and Statutes, I cannot even fathom the idea that in the very beginning when my exwife filed for divorce in Colorado the Respondents in Colorado took personal jurisdiction over me in Nevada stating that I lawfully had the obligation to abide by their laws and Statutes, and seeing how the Respondents took jurisdiction over me in Nevada they in turn should have the same obligation that was expected of me to acknowledge and abide by their own Laws and Statutes when brought up to their attention, and when they failed to do exactly that, this can only be a clear violation of my Civil Rights to the point where the *Rooker-Feldman* Doctrine does not apply, you would think that if the Respondents really thought that if I was wrong about the Colorado State Statute in question then why in the world did they not acknowledge and or declare the meaning of the Statute when brought to their attention, maybe I am out on a limb here but could it be the fact that just maybe my exwife is not entitled to spousal maint's under the Statute in question. I only pray

that this Highest Honorable Court of The Nation will grant me a WRIT OF CERTIORARI. THANK YOU,

PATRICK COOK.
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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
DEC 27 2006
CATHY A. CATTERSON CLERK
U.S. COURT OF APPEALS

PATRICK COOK,

Plaintiff - Appellant,

No. 05-17357
D.C. NO. CV-05-00301-LRH/RAM

v.

COLORADO APPEALS COURT; COLORADO SUPREME COURT; HELEN COOK RESENDEZ; ROBERTO SILVA; ROSALIE VIGNA,

MEMORANDUM*

Defendants - Appellees.

Appeal from the United States District Court
for the District of Nevada
Larry R. Hicks,
District Judge, Presiding

Submitted December 21,2006**

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Before: GOODWIN, WALLACE, and LEAVY, Circuit Judges.

Patrick Cook appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging that various individuals and entities involved in his state court divorce action in Colorado violated his constitutional rights. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo. *Noel v. Hall*, 341 F.3d 1148, 1154 (9th Cir. 2003) (dismissal based on *Rooker-Feldman*); *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004) (dismissal based on lack of personal jurisdiction). We affirm.

The district court properly determined that Cook's action against the judicial defendants is barred by the *Rooker-Feldman* doctrine because his complaint essentially challenges the propriety of the state court judgment. *See Noel*, 341 F.3d at 1158 (referring to *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *Dist. of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983)). Thus, the district court was required to "refuse to decide any issue raised in the suit that is 'inextricably intertwined' with an issue resolved by the state court." *Id.* We reject Cook's contention that defendants' alleged commission of civil rights violations during his divorce proceeding takes his complaint out of the *Rooker-Feldman* ambit because that argument still rests on a claim of legal wrong by the state courts. *See id.* at 1164.

The district court also properly dismissed Cook's ex-wife and her attorney because Cook failed to establish that the Nevada district court had personal jurisdiction over them. *See Schwarzenegger*, 374 F.3d at 801-02.

AFFIRMED.

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * * * *

PATRICK L. COOK,
Plaintiff,

CV-N-05-0301-LRH (RAM)

vs.

ORDER

ROBERTO SILVA. HELEN COOK/RESENDEY, ROSALIE VIGNA, COLORADO COURT OF APPEALS, COLORADO SUPREME COURT,
Defendants.

Presently before this Court are separate motions to dismiss filed by Defendant Helen Cook (Docket No. 10), Defendant Roberto Silva (Docket No. 12), and Defendants Rosalie Vigna, the Colorado Court of Appeals and the Colorado Supreme Court (Docket No. 21). Plaintiff Patrick Cook has filed a unified opposition to Defendants Cook and Silva's motions (Docket No. 14) and an individual opposition to the motion filed by Defendant Vigna and the Colorado courts (Docket No. 23). Defendants Cook and Silva have replied to the oppositions (Docket Nos. 15 and 20), and Plaintiff has chosen to respond to Defendant Silva's reply (Docket No. 16).

FACTUAL AND PROCEDURAL BACKGROUND

The present case involves a long running domestic dispute between Plaintiff and his ex-wife Defendant Cook that has filled up the Colorado state court system and spilled over into the Nevada federal courts. Plaintiff and Defendant Cook were legally divorced in Colorado in 2002. As part of that divorce, Plaintiff was required to pay spousal support in an approximate amount of $1,000 per month – apparently to continue until Defendant Cook began receiving social security benefits for a work related injury she suffered. Plaintiff convinced himself of the fact, and adamantly argued to the trial court, that it was a misinterpretation of the state spousal support statute to grant such an award. Defendant Vigna, the trial court judge, disagreed and made the award. Plaintiff then appealed to the Colorado Court of Appeals which upheld Defendant Vigna. Plaintiff, not content, then sought a writ of certiorari from the Colorado Supreme Court, which was denied. Some time thereafter, Plaintiff moved to Nevada, still aggrieved over his perceived slight at the hands of his ex-wife, her attorney and the Colorado courts.

Plaintiff chose to.continue his Melville-ian quest in Nevada, and found his Pequod through 42 U.S.C. section 1983. Plaintiff filed a civil rights complaint against Defendant Cook (his ex-wife), Defendant Silva (her attorney), Defendant Vigna (the trial court judge), the Colorado Court of Appeals and the Colorado Supreme Court, alleging his rights were violated when the his wife faked her injury, her attorney lied to the courts to get spousal support, the trial court improperly interpreted its own state statute, the appeals court improperly upheld the ruling, and the Colorado Supreme Court wrongly denied a writ of certiorari. Each defendant has now moved to dismiss the claims against them.

LEGAL STANDARD FOR MOTION TO DISMISS

In considering a motion to dismiss, the Court asks only whether the pleadings are sufficient to establish a claim, not whether the Plaintiff could find evidence to support his pleadings. *See, e.g., In re Glen Fed, Inc. Sec. Litig.*, 42 F.3d 1541, 1547 (9th Cir. 1994). Therefore, for the purpose of the motion, the Court accepts as true all material allegations in the complaint and construes those allegations in the light most favorable to the non-moving party. *See NL Indus., Inc. v. Kaplan,* 792 F.2d 896, 898 (9th Cir. 1986) (citing *North Star International v. Arizona Corp. Comm'n,* 720 F.2d 578, 580 (9th Cir. 1983)). Dismissal is warranted only if it appears to a certainty that the Plaintiff would not be entitled to relief under any set of facts that could be proven. *See id.*

DISCUSSION

It is readily apparent to the Court that the pending lawsuit does not belong in the Federal District Court for the District of Nevada. Upon further review of the law there is no doubt that the Court is barred from hearing the pending claims under several well settled doctrines. However, not all defendants can be dismissed with prejudice from this Court. Thus, the Court will discuss the pending claims according to the type of dismissal granted.

1. Defendant Vigna and the Colorado Courts

Under the *Rooker-Feldman* doctrine this Court has no subject matter jurisdiction to consider certain claims because to do so would be an impermissible exercise of appellate jurisdiction over a state court decision. "This is true even when the challenge to a state court decision involves federal constitutional issues." *Branson v. Nott,*

62 F.3d 287, 290 (9th Cir. 1995), *cert. denied* 516 U.S. 1009, 116 S. Ct. 565, 133 L. Ed. 2d 491 (1995). Further, this doctrine applies even when the state court judgment is not made by the highest state court. *Worldwide Church of God v. McNair*, 805 F.2d 888, 893 n. 3 (9th Cir. 1986).

The Ninth Circuit has recently clarified the test to be applied in determining whether the *Rooker-Feldman* doctrine precludes a plaintiff's claims. In *Noel v. Hall,* the Court held:

> [T]he Supreme Court's decisions in *Rooker* and *Feldman*, and our seven decisions applying the *Rooker-Feldman* doctrine to deny jurisdiction fall into a relatively clear pattern: It is a forbidden de facto appeal under *Rooker-Feldman* when the plaintiff in federal district court complains of a legal wrong allegedly committed by the state court, and seeks relief from the judgment of that court. There are two kinds of cases in which such a forbidden de facto appeal might be brought. First, the federal plaintiff may complain of harm caused by a state court judgment that directly withholds a benefit from (or imposes a detriment on) the federal plaintiff, based on an allegedly erroneous ruling by that court.
>
> ...Second, the federal plaintiff may complain of a legal injury caused by a state court judgment, based on an allegedly erroneous legal ruling, in a case in which the federal plaintiff was one of the litigants.

341 F.3d 1148, 1163 (9th Cir. 2003).

It is clear to this Court that Plaintiff's complaint against Defendant Vigna and the Colorado courts falls within the second example provided in *Noel.* That is,

Plaintiff alleges misconduct and unlawful rulings on the part of the state court, and claims a legal injury as a result of these rulings. These claims attempt to bring a direct challenge to the correctness of the decision of the state court, and therefore consist of a forbidden de facto appeal. Accordingly, this Court is without subject matter jurisdiction to hear Plaintiff's claim; an incurable defect. The claims against Defendant Vigna and the Colorado courts must be dismissed with prejudice.

2. Defendants Cook and Silva

Defendants Cook and Silva have moved to dismiss the claim against them for lack of personal jurisdiction. The burden of proving jurisdiction is on Plaintiff, but only a prima facie showing of jurisdiction is required, as the Court has undertaken no evidentiary hearing on the issue. *Lee v. City of Los Angeles,* 250 F.3d 668, 692 (9th Cir. 2001). Generally, personal jurisdiction exists when statutory authority exists for the exercise of jurisdiction and the resulting jurisdiction comports with the requirements of due process. *Id.* The due process requirements of personal jurisdiction require a showing of minimum contacts to the forum state through purposeful availment of the State's resources, a connection between the lawsuit and those contacts and a general sense of reasonableness in finding jurisdiction. *Id.*

The Court notes that no showing has been made that either Defendant Cook or Defendant Silva has ever purposely availed themselves of the resources of the state of Nevada in a manner that would reasonably lead them to believe they would be hailed into court here to defend themselves on issues arising from Defendant Cook's Colorado divorce. In fact, Plaintiff never denies that no standard requirements for personal jurisdiction exist but requests the Court take jurisdiction because "I have

already proved that I will not get a fair trial in Colorado." (Pl.'s Resp. from Defs.' Mot. for Lack of Jurisdiction and Improper Venue).

The Court has thoroughly reviewed the record in this case and can find no suggestion that Defendants Cook and Silva have created any contacts with Nevada that would allow this Court to conclude that personal jurisdiction exists in this matter. It is apparent that if these claims are to be litigated, they are to be litigated in Colorado, where this dispute has been litigated in all other instances. As such, the Court must dismiss the claims against Defendants Cook and Silva without prejudice for lack of personal jurisdiction.

CONCLUSION

It is therefore ORDERED that the Defendants Cook and Silva's motions to dismiss for lack of personal jurisdiction (Dockets No. 10 and 12) are GRANTED and the claims are dismissed without prejudice.

It is further ORDERED that Defendants Vigna, the Colorado Court of Appeals, and the Colorado Supreme Court's motion to dismiss for lack of subject matter jurisdiction (Docket No. 21) is GRANTED and the claims are dismissed with prejudice.

DATED this 25th day of October, 2005.

/s/
LARRY R. HICKS
United States District Judge

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PATRICK L. COOK,
Plaintiff,

JUDGMENT IN A CIVIL CASE

V.

CASE NUMBER:
CV-N-05-0301-LRH (RAM)

ROBERTO SILVA, et al,
Defendants.

___ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

___ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

_X_ Decision by Court. This action came to be considered before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that this action is in favor of the Defendants and against the Plaintiff.

October 28, 2005

LANCE S. WILSON
Clerk

/s/
WAYNE JULIAN
Deputy Clerk